

Message Text

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ACTION OES-06

INFO OCT-01 EA-07 ISO-00 HEW-04 L-03 NSF-01 AID-05 CIAE-00
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FM AMEMBASSY TOKYO
TO SECSTATE WASHDC PRIORITY 5020

LIMITED OFFICIAL USE SECTION 1 OF 2 TOKYO 1165

E.O. 11652: N/A
TAGS: TPHY, TBIO, OSCI, JA
SUBJECT: DRAFT US-JAPAN COOPERATIVE AGREEMENT IN HEALTH,
BIOMEDICAL RESEARCH AND REHABILITATION

REF: STATE 9438

A. EMBASSY APPRECIATES OPPORTUNITY TO COMMENT ON DRAFT AGREEMENT
TRANSMITTED REFTEL. SUGGESTIONS WHICH FOLLOW ARE SEQUENTIAL IN
RELATIONSHIP TO TEXT, NOT IN ORDER OF IMPORTANCE.

B. PREAMBLE:

1. THIRD CLAUSE-INSERT "BILATERAL" BETWEEN "EXISTING" AND
"COOPERATION".

2. FIFTH CLAUSE-CHANGE ENDING SEMICOLON TO COMMA AND
ADD, "AND OF INCLUDING THE REHABILITATION OF HANDICAPPED
INDIVIDUALS AS AN IMPORTANT SEGMENT OF SUCH EFFORT;"

3. CONCLUDING CLAUSE-INSERT "RELATIONSHIP" BETWEEN
"COOPERATION" AND "ACCORDING", OR DELETE "AN".

C. ARTICLE 1:

1. THIRD LINE-REMOVE "INCLUDING". (THIS CHANGE IS
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SUGGESTED SO THAT SCOPE STATEMENT IS CONSISTENT WITH TITLE OF
AGREEMENT. WE ASSUME THAT AGREEMENT CONSISTS OF THREE PARTS:
(1) HEALTH; (2) BIOMEDICAL RESEARCH; (3) REHABILITATION. IF
THIS IS WRONG CONSTRUAL, TITLE SHOULD BE ADJUSTED ACCORDINGLY).

2. SUBPARA A - SECOND LINE: ADD "BIOMEDICAL RESEARCH"
BETWEEN "HEALTH" AND "REHABILITATION". (SAME COMMENT AS ABOVE

APPLIES).

3. ADD ADDITIONAL SUBPARA G: "EXCHANGE OF ADMINISTRATIVE INFORMATION ON THE ORGANIZATION AND REGULATION OF HEALTH, BIOMEDICAL RESEARCH, AND REHABILITATION EFFORTS CARRIED OUT BY THE PARTIES." (THIS SUGGESTION IS MADE TO CODIFY THE EXCHANGE OF BUDGET DATA AND FDA/MHW REGULATIONS, FOR EXAMPLE, AND TO COVER SUCH MATTERS AS CONTROL OF RECOMBINANT DNA RESEARCH).

D. ARTICLE 2:

1. A QUESTION MAY BE RAISED BY THE JAPANESE AS TO THE DISPOSITION OF FUNDAMENTAL BIOMEDICAL RESEARCH NOW CARRIED OUT UNDER THE U.S.-JAPAN COOPERATIVE SCIENCES AGREEMENT, ADMINISTERED ON THE U.S. SIDE BY NSF. THE WORD "ALL" IN SIXTH LINE OF ARTICLE IS KEY WORD HERE. WE BELIEVE THAT IT WAS NOT INTENTION OF DRAFTERS OF AGREEMENT TO SUBSUME THE NSF/JSPS COOPERATION UNDER NEW DRAFT AGREEMENT, AND THEREFORE A FOOTNOTE OR OTHER DEVICE MAY BE NECESSARY TO INSURE THAT PROPER INTERPRETATION IS REACHED.

2. SUGGEST THAT SUBPARAS ARTICLE 2 BE REPHRASED AS FOLLOWS, CONSISTENT WITH PREVIOUS EMBASSY COMMENTS:

- A. HEALTH ACTIVITIES
- B. BIOMEDICAL RESEARCH
- C. REHABILITATION OF THE PHYSICALLY AND MENTALLY HANDICAPPED
- D. OTHER ACTIVITIES AS MUTUALLY AGREED

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3. EMBASSY SCICOUNS HAS BEEN THINKING ABOUT PROPOSING TO DHEW THAT COOPERATION BE ESTABLISHED WITH JAPANESE IN FIELD OF DENTAL RESEARCH, AND SPECIFICALLY ON PROSTHETIC IMPLANTATIONS. SIGNIFICANT RESEARCH IN THIS AREA APPEARS TO BE GOING ON AT NIHON UNIVERSITY, A PRIVATE UNIVERSITY NOT UNDER CONTROL OF GOJ. IF SUCH COOPERATION PROVES TO BE FEASIBLE AND DESIRABLE ON PART OF DHEW/NIH/NIDR, IS WORDING OF ARTICLE 2 SUFFICIENTLY BROAD TO COVER DENTAL, AS DISTINGUISHED FROM BIOMEDICAL, RESEARCH?

E. ARTICLE 3:

1. SECOND PARA, LINE 1 - CHANGE "COORDINATOR" TO "COORDINATORS". (THIS IS PROBABLY TYPO).

2. THIRD PARA - ADD FOLLOWING: "THE JOINT COMMITTEE SHALL PREPARE (OR AUTHORIZE THE PREPARATION) OF A JOINT BIENNIAL REPORT TO THE TWO PARTIES, OUTLINING THE ACTIVITIES CARRIED OUT UNDER THE PROGRAM AND THE ACHIEVEMENTS MADE. THE PARTIES SHALL SHARE THE COSTS OF PREPARATION OF THE REPORT IN A MANNER TO BE MUTUALLY

AGREED." (IN ALL OTHER ACTIVE BILATERAL AGREEMENTS BETWEEN THE TWO COUNTRIES, THE JAPANESE FIND IT IMPERATIVE TO HAVE OFFICIAL DOCUMENTATION OF PROGRESS MADE. THE REPORTS ARE USED TO CONVINCE THE MINISTRY OF FINANCE THAT FUNDING OF JAPANESE PARTICIPATION SHOULD BE CONTINUED OR INCREASED. IN EMBASSY'S OPINION, SUCH REPROTS ARE EXTREMELY USEFUL HISTORICAL RECORDS, SINCE PERSONNEL PARTICIPATING IN THE PROGRAM CHANGE FROM TIME TO TIME, AND CONSULTATION OF THE RECORD PROVIDES FOR A MORE ORDERLY AND CONTINUOUSLY EVOLVING EFFORT. REFERENCE TO A PERIODIC REPORT IN THE AGREEMENT WILL GIVE THE JAPANESE SIDE THE AUTHORITY TO EXPEND FUNDS IN ITS PREPARATION).

F. ARTICLE 4:

NO COMMENT ON TEXT. HOWEVER, JAPANESE MAY QUESTION WHAT IS MEANT BY "DIRECT INSTITUTIONAL COOPERATION" HERE AND RELATED TERMINOLOGY IN ARTICLE 3. FOR CLARITY, IT MAY BE NECESSARY TO LIMITED OFFICIAL USE

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ADD A SENTENCE EITHER IN ARTICLE 3 OR ARTICLE 4 TO EFFECT THAT THE JOINT COMMITTEE BY MUTUAL AGREEMENT MAY AUTHORIZE DIRECT INSTITUTIONAL COOPERATION.

G. ARTICLE 5:

WE SUGGEST THAT "WHO" BE SPELLED OUT, SINCE NO OTHER ORGANIZATION ABBREVIATIONS OR ACRONYMS ARE USED IN DRAFT.

H. ARTICLE 6:

NO COMMENT.

I. ARTICLE 7:

PARA B - SUGGEST CHANGING "INDUSTRIAL" IN LINE TWO TO "INTELLECTUAL". LATTER IS COMMONLY USED BY JAPANESE TO IDENTIFY INTELLECTUAL MIGHT BE USED.

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ACTION OES-06

INFO OCT-01 EA-07 ISO-00 HEW-04 L-03 NSF-01 AID-05 CIAE-00

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J. ARTICLE 8:

THE INTENT OF THIS ARTICLE IS NOT CLEAR TO US. DOES IT MEAN THAT SEPARATE AGREEMENTS WOULD BE DEVELOPED FOR SOCIAL WELFARE AND SOCIAL SECURITY, OR WOULD THE ARRANGEMENTS FOR COOPERATION ON THESE SUBJECTS BE DEVELOPED UNDER TERMS OF PROPOSED AGREEMENT? IF LATTER IS CASE; SUGGEST THAT "UNDER THIS AGREEMENT" BE INSERTED AFTER "COOPERATION" IN LINE TWO.

K. ARTICLE 9:

THE CONNOTATION OF THE WORD "ALL" IN SEVENTH LINE HAS SAME PROBLEM AS NOTED IN COMMENTS ON ARTICLE 2 ABOVE. ALSO, THERE ARE SOME HEALTH-RELATED AGREEMENTS BETWEEN TWO COUNTRIES WHICH WERE NOT EXECUTED BY THE "PARTIES", I.E., AT THE GOVERNMENTAL LEVEL, SUCH AS NIH AGREEMENT ON EYE RESEARCH, FDA AGREEMENT ON EXCHANGE OF REGULATORY INFORMATION, ARRANGEMENT FOR EXCHANGE OF PUBLIC HEALTH STATISTICS, AND PERHAPS SOME OTHERS. IF IT IS INTENTION OF USG TO SUBSUME ALL SUCH ARRANGEMENTS UNDER NEW AGREEMENT, SUGGEST THAT CLARIFYING PHRASE SUCH AS, "OR AGENTS OF THE PARTIES" BE ADDED AFTER "PARTIES" IN EIGHTH LINE OF ARTICLE. THIS IS RATHER LEGALISTIC POINT, BUT ONE THAT MAY WELL BE RAISED BY JAPANESE DURING NEGOTIATIONS.

L. FYI: THE USE OF TERM "BIOMEDICAL RESEARCH" HAS DIFFERENT LIMITED OFFICIAL USE

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CONNOTATIONS IN THE U.S. AND JAPAN. FOR EXAMPLE, IN JAPAN BIOMEDICAL RESEARCH IS DONE, BY DEFINITION, IN MEDICAL UNIVERSITIES AND INSTITUTIONS, IRRESPECTIVE OF THE ACTUAL TOPIC UNDER INVESTIGATION. IN THE U.S., BOTH HEW AND NSF MAKE SUBSTANTIVE DISTINCTIONS ON THE BASIS OF RESEARCH CONTENT, BUT WITHOUT REGARD TO NATURE OF INSTITUTION PERFORMING WORK; E.G., NSF CAN AND DOES SUPPORT PROPOSALS IN BASIC MEDICAL SCIENCES IN MEDICAL SCHOOLS, BUT DOES NOT SUPPORT CLINICAL RESEARCH. AT TIME OF NEGOTIATIONS WITH GOJ, A MORE SPECIFIC DEFINITION OF "BIOMEDICAL RESEARCH" MAY BE REQUIRED.

M. GENERIC ISSUE REMAINS OF HOW USG AGENCIES OR ORGANIZATIONS

ACTING AS CONTRACTORS TO USG ARE TO DEAL WITH PRIVATE UNIVERSITIES OR RESEARCH INSTITUTIONS NOT UNDER CONTROL OF GOJ. WILL COOPERATIVE RESEARCH CONDUCTED BETWEEN SUCH PARTIES FALL UNDER TERMS OF AGREEMENT OR OUTSIDE IT? ARTICLE 1 DOES NOT MAKE THIS DIFFERENTIATION (PERHAPS INTENTIONALLY NOT). WE NOTE THAT NIH NOW HAS IN FORCE SEVERAL CONTRACTS WITH SCIENTISTS IN PRIVATE JAPANESE UNIVERSITIES; ARE THESE CONSIDERED TO BE " COOPERATIVE" EFFORTS OR MERELY DELIVERY OF SERVICES FOR COMPENSATION?

N. EMBASSY HOPES THAT BY TIME DRAFT AGREEMENT IS PRESENTED TO GOJ FOR CONSIDERATION, FAVORABLE RESOLUTION OF PROBLEMS CONCERNING PROPOSED NIH/NCI CONTRACT TO DR. KOBATA OF KOBE NATIONAL UNIVERSITY WILL HAVE OCCURRED. IF SO, AGREEMENT MIGHT PROVE USEFUL VEHICLE TO GAIN GENERAL GOJ ACCEPTANCE FOR GOVERNMENT-TO-GOVERNMENT CONTRACTS OF THIS SORT, USING THE THEME THAT THESE ARE COOPERATIVE PROJECTS. ALTHOUGH PRESENT WORDING OF AGREEMENT DOES NOT APPEAR TO PRECLUDE SUCH ARRANGEMENTS, WORDING WHICH SPECIFICALLY RECOGNIZES THE FEASIBILITY OF USG-SPONSORED RESEARCH IN JAPAN (AND PRESUMABLY VICE VERSA) MORE THAN LIKELY WOULD BE HELD NECESSARY BY ONE OR BOTH SIDES. END FYI.
HODGSON

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